

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0058P

Income Tax

Calendar Years 1994 & 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The taxpayer protests the negligence penalty assessed on an income audit performed for the calendar years 1994 and 1995.

The taxpayer's principal business is as a worldwide marketing representative for famous sports, music and entertainment personalities, or for the estates or heirs of famous deceased personalities. More specifically, the taxpayer functions as either the exclusive or non-exclusive representative for these clients by actively obtaining, servicing, and negotiating licensing agreements for use of the personality by third parties.

I. **Tax Administration** – Penalty

The taxpayer protests the negligence penalty assessed for the taxpayer's failure to file amended returns for 1994 & 1995.

The taxpayer had a letter of finding issued August 8, 1996 for a prior audit covering the calendar years 1991, 1992, & 1993. As the letter of finding was issued after the 1994 & 1995 years of the present audit, and the letter of finding made decisions that effected the 1994 & 1995 years, the Department feels the taxpayer should have filed amended returns for 1994 & 1995. When the present audit for 1994 & 1995 commenced on August 1998, no amended returns had been filed for 1994 & 1995.

The taxpayer argues there is no cite that requires the filing of amended returns as a result of a letter of finding. The Department argues the taxpayer knew the 1994 & 1995 returns needed to be adjusted and therefore was required to file the amended returns.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

TB/RAW/JMS 990811